

In the case of proposed regulations dealing with reporting requirements for Presidential candidates, both the House and the Senate may disapprove.

On Oct. 22, 1975,⁽⁸⁾ Mr. John Young, of Texas, called up by direction of the Committee on Rules House Resolution 800, providing for the consideration in the House of House Resolution 780, reported from the Committee on House Administration and disapproving a regulation proposed by the Federal Election Commission; a special order from the Committee on Rules was necessary since the Federal Election Campaign Act Amendments of 1974 did not provide a privileged procedure for considering such disapproval resolutions in the House. The House adopted the special order and then adopted the disapproval resolution. (The disapproval resolution had previously failed of passage under suspension of the rules on Oct. 20.)

The Federal Election Campaign Act Amendments of 1976, Public Law No. 94-283, section 110(b), amended the act to provide that whenever a committee of the House reports a disapproval resolution provided for by the act, "it is at any time thereafter in order

(even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to." The 1976 law also redefined a "rule or regulation" which could be disapproved as a "provision or series of interrelated provisions stating a single separable rule of law."

§ 11. Campaign Practices and Contested Elections

[Note: For specific election contests, see chapter 9, *infra*.]

In judging contested elections, the Committee on House Administration or its subcommittee on elections, and then the House, take into account alleged violations of federal or state election campaign laws and the effect of such violations on the outcome of the election. Such statutes are not binding on the House in exercising its function of judging the elections of its Members, since the Constitution gives the House the sole power to so judge.⁽⁹⁾

8. 121 CONG. REC. 33662, 33663, 94th Cong. 1st Sess.

9. See *House Rules and Manual* §§ 47-50 (comments to U.S. Const. art. I, § 5, clause 1) (1973).

The House generally does not unseat a Member for alleged campaign irregularities if he possesses a proper certificate of election and where it has been found in an election contest that any violations of the applicable statute were unintentional and not fraudulent.⁽¹⁰⁾ Thus, failure to file timely and accurate expenditure reports with the Clerk of the House does not necessarily deprive a contestee of his seat, and the Committee on House Administration will consider evidence of mitigating circumstances and of negligence as opposed to fraud.⁽¹¹⁾

The House has generally considered the election contest as the proper procedure by which a losing candidate can challenge the election of the nominee for alleged campaign improprieties.⁽¹²⁾ However, violations of the Corrupt Practices Act could also be litigated in civil court proceedings in a proper case.⁽¹³⁾

In presenting an election contest based on campaign irregular-

ities before a House committee, the contestant has the burden of proof to establish by a fair preponderance of the evidence that (1) the contestee had violated a state or federal campaign practices statute, and (2) that any such alleged violations directly or indirectly prevented the contestant from receiving a majority of the votes cast.⁽¹⁴⁾

Negligence in Reporting Campaign Expenditures

§ 11.1 An elections committee has found that negligence on the part of a candidate in preparing expenditure accounts to be filed with the Clerk should not deprive him of his seat in the House, absent fraud, where he received a substantial majority of the votes cast.

For example, on Jan. 31, 1944,⁽¹⁵⁾ an elections committee

10. See § 11.1, *infra*.

11. See § 11.5, *infra*.

12. See Ch. 9, *infra*. See § 12, *infra*, for expulsion, exclusion and censure in relation to campaign practices.

Congressional committees have investigated allegations of improper or illegal campaign activities (see §§ 13, 14, *infra*).

13. See Pub. L. No. 92-225, § 308(d)(1).

14. H. REPT. NO. 1783, to accompany H. Res. 427, reported Mar. 14, 1940, 86 CONG. REC. 2915, 2916, 76th Cong. 3d Sess., in the *Scott v Eaton* contest for the 18th Congressional District of California.

15. 90 CONG. REC. 962, 78th Cong. 2d Sess. See also 90 CONG. REC. 3252, 3253, 78th Cong. 2d Sess., Mar. 29, 1944, where the Committee on Elections No. 1 recommended that an

reported (H. Rept. No. 1032) in the contested election case of *Thill v McMurray*, for the Fifth Congressional District of Wisconsin. The committee recommended that the contestee be declared entitled to the seat despite irregularities in reporting expenditures to the Clerk. The committee found that the contestee had received a substantial majority of the votes for his seat and should not be deprived of his seat for negligent and not fraudulent preparation of expenditure accounts by himself and his attorney. The committee did admonish the contestee in its report for signing under oath an expenditure statement without being familiar with its contents and irregularities.⁽¹⁶⁾

The House agreed without debate to a resolution (H. Res. 426) dismissing the contest.⁽¹⁷⁾

election contest be dismissed where the contestee had failed to correctly file reports under the Corrupt Practices Act, but where such reporting was merely negligent and not purposeful. The House adopted H. Res. 490, dismissing the contest.

16. See also the report of an elections committee in the case of *Schafer v Wasielewski*, Fourth Congressional District of Wisconsin, where expenditure accounts were negligently prepared. The report stated that the "committee does not condone such negligence." 90 CONG. REC. 3252, 3253, 78th Cong. 2d Sess., Mar. 29, 1944 (report printed in the Record).
17. 90 CONG. REC. 933, 78th Cong. 2d Sess., Jan. 31, 1944.

Distribution of Campaign Literature

§ 11.2 A pre-election irregularity, such as unauthorized distribution of campaign literature, will not be attributed to a particular candidate where he did not participate therein.

On Sept. 8, 1959,⁽¹⁸⁾ the House agreed to House Resolution 380, reported by the Committee on House Administration and called up by Mr. Robert T. Ashmore, of South Carolina; the resolution declared Mr. T. Dale Alford entitled to a seat from the Fifth Congressional District of Arkansas following an investigation by the committee (H. Rept. No. 1172). The committee found that although campaign literature had been improperly distributed during the election, such distribution was not authorized by or participated in by Mr. Alford.⁽¹⁹⁾

18. 105 CONG. REC. 18610, 18611, 86th Cong. 1st Sess.

19. For a description of the pre-election irregularities investigated by the Committee on House Administration, pursuant to the recommendation of the Select Committee on Campaign Expenditures of the 85th Congress, see the remarks of Mr. Thomas P. O'Neill, Jr. (Mass.) at 105 CONG. REC. 3432-34, 86th Cong. 1st Sess., Mar. 5, 1959.

§ 11.3 An elections committee found no evidence that contestee financed extra editions of a magazine which supported his candidacy.

On Mar. 19, 1952,⁽²⁰⁾ an elections committee reported (H. Rept. No. 1599) in the contested election case of *Macy v Greenwood* for the First Congressional District of New York. The committee found no evidence that the contestee financed extra editions of a magazine which had supported his candidacy, and recommended that the contestee be declared entitled to the seat.

The House adopted House Resolution 580 declaring the contestee entitled to his seat.⁽¹⁾

Expenditures by Political Committees and Volunteers

§ 11.4 An elections committee may consider evidence to determine whether certain expenditures were made by a "voluntary" committee or "personal" campaign committee, as defined by state law.

On Mar. 29, 1944,⁽²⁾ the House agreed to House Resolution 490,

20. 98 CONG. REC. 2545, 82d Cong. 2d Sess.

1. 98 CONG. REC. 2517, 82d Cong. 2d Sess.

2. 90 CONG. REC. 3252, 3253, 78th Cong. 2d Sess.

dismissing the contested election case of *Schafer v Wasielewski* for the Fourth Congressional District of Wisconsin, pursuant to the report of the Committee on Elections No. 1. The report recommended such dismissal on the ground that although the contestee's expense reports disclosed expenditures in excess of amounts permitted by law, certain of those expenses were not campaign expenses attributable to the candidate himself under Wisconsin state law. The report, which was printed in the Record, stated in part as follows:

The Wisconsin statutes limit to \$875 the amount of money that can be spent by a candidate for Congress in the general election. The Wisconsin statutes, however, place no limitation upon receipts and expenditures of individuals or groups that might voluntarily interest themselves in behalf of a candidate.

Thaddeus F. Wasielewski filed with the Clerk of the House of Representatives on November 5, 1942, a statement, as required by Federal law, showing receipts of \$1,689 and total expenditures of \$1,172.

On December 17, 1942, contestant filed notice of contest of the election of Thaddeus F. Wasielewski in which he pointed out that the sum set forth in the statement filed by Thaddeus F. Wasielewski with the Clerk of the House of Representatives was in excess of expenditures permitted under Wisconsin law and the Federal Corrupt Practices Act, and that Thaddeus F.

Wasielewski was, therefore, in violation of the statutes of the State of Wisconsin and of the Federal statutes.

On its face, the statement of receipts and expenditures filed by contestee with the Clerk of the House of Representatives violates the laws of Wisconsin and the Federal Corrupt Practices Act. The direct evidence, however, indicates that the contributions listed were paid to the Wasielewski for Congress Club and the expenditures made by that organization, which was shown to be a voluntary committee rather than a personal campaign committee as defined by the laws of Wisconsin.

...

Under all the circumstances, the committee is of the opinion that Mr. Wasielewski, who received a substantial plurality of votes, approximately 17,000, in the general election of November 3, 1942, over Mr. Schafer, his nearest opponent, should not be denied his seat in the House of Representatives on account of the errors made in the statement filed by Mr. Wasielewski with the Clerk of the House of Representatives.

Effect of Mitigating Circumstances

§ 11.5 Mitigating circumstances may be taken into account by a committee on elections in determining whether to recommend to the House that a seated Member or Delegate be unseated for failure to comply with the Corrupt Practices Act which requires filing

with the Clerk complete and itemized accounts of expenditures.

On May 21, 1936,⁽³⁾ the Committee on Elections recommended in its report (H. Rept. No. 2736) on the contested election case of *McCandless v King* (for the seat of Delegate from Hawaii) that the contestee, Samuel Wilder King, be declared entitled to the seat, notwithstanding a failure to file accounts of expenditures as required by law.

The committee stated in its report that it had found certain mitigating circumstances to be present in the case. The report stated that such circumstances could include evidence of personal character, lack of experience as a candidate for public office, and the nature of the expenditures.

The committee also found that although the contestee had failed to comply with the Corrupt Practices Act, which required reporting within 30 days of the election to the Clerk of the House a complete and itemized account of expenditures, there were circumstances in mitigation of such failure.

The committee found that the contestee had, within the 30 days, communicated certain itemized

3. 80 CONG. REC. 7765, 74th Cong. 2d Sess.

expenditures to the Clerk and indicated his intention once in Washington to complete and file the required forms.

On June 2, 1936, the House declared the contestee entitled to his seat.⁽⁴⁾

§ 12. Expulsion, Exclusion, and Censure

[Note: For full discussion of censure and expulsion, see chapter 12, *infra*.]

Under article I, section 5, clause 2 of the United States Constitution, the House may punish its Members and may expel a Member by a vote of two-thirds.

In the 90th Congress, the Senate censured a Member in part for improper use and conversion of campaign funds.⁽⁵⁾ And the Committee on House Administration recommended in a report in the 74th Congress that a Member or Delegate could be censured for failure to comply with the Corrupt Practices Act.⁽⁶⁾ However, the House and the Senate have generally held that a Member may not be expelled for conduct committed prior to his election.⁽⁷⁾

4. 80 CONG. REC. 8705, 74th Cong. 2d Sess. (H. Res. 521).

5. See § 12.3, *infra*.

6. See § 12.4, *infra*.

7. See 2 Hinds' Precedents §§ 1284–1289; 6 Cannon's Precedents §§ 56, 238.

As to exclusion—or denial by the House of the right of a Member-elect to a seat—by majority vote, the House has the power to judge elections and to determine that no one was properly elected to a seat. If violations of the election campaign statutes are so extensive or election returns so uncertain as to render an election void, the House may deny the right to a seat.⁽⁸⁾

Expulsion

§ 12.1 In the 77th Congress, the Senate failed to expel, such expulsion requiring a two-thirds vote, a Senator whose qualifications had been challenged by reason of election fraud and of conduct involving moral turpitude.

On Jan. 3, 1941, at the convening of the 77th Congress, Mr. William Langer, of North Dakota, took the oath of office, despite charges from the citizens of his state recommending he be denied a congressional seat because of campaign fraud and past conduct involving moral turpitude.⁽⁹⁾

For discussion of the House as judge of qualifications for seats, see Ch. 7, *supra*.

8. See Parliamentarian's note in § 12.2, *infra*.

9. 87 CONG. REC. 3, 4, 77th Cong. 1st Sess.